

**Department of State Health Services
Council Agenda Memo for State Health Services Council
August 28 - 29, 2013**

Agenda Item Title: Amendments to rules concerning the standards for allowable methods of euthanasia for animals in the custody of an animal shelter

Agenda Number: 3.b

Recommended Council Action:

☐ For Discussion Only

☒ For Discussion and Action by the Council

Background:

The Zoonosis Control Branch, located in the Infectious Disease Control Unit, Infectious Disease Prevention Section of the Disease Control and Prevention Services Division, promotes public health through the prevention and control of zoonotic diseases, which are diseases transmitted to humans from animal reservoirs. Zoonotic diseases encompass many of the most dangerous disease threats to humans and, worldwide, make up approximately 60 percent of human pathogens and 75 percent of recently emerging infectious diseases affecting humans. Some of the zoonoses present in Texas include anthrax, hantavirus, Lyme disease, plague, rabies, tularemia, and West Nile virus.

A representative sample of services provided by the Zoonosis Control Branch includes:

- surveillance of diseases, such as rabies (in 2012, there were 683 laboratory-confirmed cases of rabies);
- the Oral Rabies Vaccination Program;
- inspection of rabies quarantine facilities (Zoonosis Control personnel inspected 495 rabies quarantine facilities during 2012); and
- consultations to the public, animal control professionals, and other groups on disease transmission, handling potential rabies exposures, and interpreting animal-related laws.

The program is funded through General Revenue.

Summary:

The purpose of the rules is to establish minimum standards for allowable methods of euthanasia for animals in the custody of an animal shelter. The proposed amendments reflect requirements of Senate Bill (SB) 360, 83rd Legislature, Regular Session, 2013, which amends Texas Health and Safety Code, Chapter 821, Subchapter C.

SB 360 prohibits the use of carbon monoxide (CO) and requires the administration of sodium pentobarbital for euthanizing dogs and cats in the custody of an animal shelter. SB 360 requires rules to be adopted by the Executive Commissioner by December 1, 2013, and compliance by January 1, 2014.

The amendments cover purpose, definitions, animal identification and owner notification, and allowable methods of euthanasia. The updates for euthanasia standards will comply with SB 360 and incorporate some of the recommendations by the American Veterinary Medical Association (AVMA) in the recently updated version of the *AVMA Guidelines for the Euthanasia of Animals*.

The amendments comply with the four-year review of agency rules required by Government Code, Section 2001.039.

Key Health Measures:

Carbon monoxide is a colorless, tasteless, odorless, and highly explosive gas that may pose a threat to the health and safety of shelter workers if not used properly. Therefore, there may be a reduction in potential exposure to CO for animal shelter staff due to SB 360 and the subsequent rule amendments. The Texas Humane Legislative Network has estimated that 29 animal shelter facilities in Texas use CO chambers.

It is anticipated that these chambers will be used with reduced frequency, although shelters can still use CO to euthanize other animals if deemed appropriate by the AVMA. Following the adoption of the proposed rules, DSHS may contact these facilities to see if they eliminated or significantly reduced the use of CO for euthanasia of any animals.

DSHS does not inspect animal shelters relating to their euthanasia techniques nor does DSHS have authority for enforcement of Chapter 821. If Regional Zoonosis Control staff receive a complaint about a shelter inappropriately conducting euthanasia, they will contact the shelter manager about the complaint and educate them about the law. The complainant is also referred to local law enforcement, which is the entity responsible for enforcing this law.

Summary of Input from Stakeholder Groups:

Stakeholder input for the proposed rules was sought from the Texas Animal Control Association, Texas Humane Legislative Network, Texas Veterinary Medical Association, Texas State Board of Veterinary Medical Examiners, Texas Municipal League, Texas Federation of Animal Care Societies, and statewide DSHS Zoonosis Control staff.

Rule changes from stakeholder input included:

- adding references to the *AVMA Guidelines for the Euthanasia of Animals* for clarification purposes;
- leaving an animal in a CO chamber for 15 minutes instead of 5 (after cessation of respiration);
- specifying placement for an animal receiving an intraperitoneal injection; and
- allowing litters and/or nursing animals to be together with their mother per a joint request from the Texas Humane Legislative Network and the Texas Federation of Animal Care Societies.

Zoonosis Control staff added information pertaining to preferential routes of injectable administration of sodium pentobarbital to be cohesive with recommendations in the *AVMA Guidelines for the Euthanasia of Animals*. Zoonosis Control staff also added clarifying language pertaining to mandatory training of shelter staff who euthanize animals in the custody of an animal shelter to be in accordance with Texas Health and Safety Code, Chapter 821.

Proposed Motion:

Motion to recommend that HHSC proceed with the rulemaking process for rules contained in agenda item **#3.b.**

Approved by Assistant Commissioner/Director:		Janna Zumbrun, Assistant Commissioner for DCPS Division	Date: 7-12-2013
Presenter:	Tom Sidwa, DVM, MPH	Program: Zoonosis Control Branch	Phone No.: 512-776-6628
Approved by CCEA:		Carolyn Bivens	Date: 7-19-2013

Title 25. HEALTH SERVICES

Part 1. DEPARTMENT OF STATE HEALTH SERVICES

Chapter 169. Zoonosis Control

Subchapter D. Standards for Allowable Methods of Euthanasia for Animals in the Custody of an Animal Shelter

Amendments §§169.81 - 169.84

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§169.81 - 169.84, concerning the standards for allowable methods of euthanasia for animals in the custody of an animal shelter.

BACKGROUND AND PURPOSE

The rules are necessary to comply with Texas Health and Safety Code, Chapter 821, Subchapter C, “Euthanasia of Animals,” which provides the Executive Commissioner of the Health and Human Services Commission with the authority to administer the chapter and adopt rules necessary to effectively administer the program.

On May 10, 2013, Senate Bill (SB) 360, 83rd Legislature, Regular Session, 2013, was signed into law by the Governor, and amended Health and Safety Code, Chapter 821, Subchapter C. SB 360 prohibits the use of carbon monoxide and requires the administration of sodium pentobarbital for euthanizing dogs and cats in the custody of an animal shelter. This legislation requires rules to be adopted by the Executive Commissioner by December 1, 2013, and compliance by January 1, 2014.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 169.81 - 169.84 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are mandated.

Specifically, the sections cover purpose, definitions, animal identification and owner notification, and allowable methods of euthanasia.

After carefully considering the alternatives, the department believes the rules as amended are the best method of implementing the statute to protect the public health with rules on the standards for allowable methods of euthanasia for animals in the custody of an animal shelter in the State of Texas.

SECTION-BY-SECTION SUMMARY

The amendment to §169.81 provides clarification and modifies the language to make it more concise.

The amendment to §169.82 clearly defines the term "animal shelter" and adds a definition for "department."

Section 169.83 adds new language to provide instruction to animal shelter personnel to document attempts to identify animal ownership and notifying owners prior to euthanasia.

Section 169.84 is amended to comply with SB 360; it also was modified to incorporate some of the updates provided by the American Veterinary Medical Association (AVMA) in the recently revised edition of the *AVMA Guidelines for the Euthanasia of Animals*.

FISCAL NOTE

Janna Zumbrun, Director, Infectious Disease Prevention Section, has determined that for each year of the first five-years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Ms. Zumbrun has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that animal shelters are not operated by small businesses and micro-businesses.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Zumbrun has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of clarifying language in the sections will be to promote more humane euthanasia of animals in the custody of an animal shelter and to promote public health and safety.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety

of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Tom Sidwa, DVM, MPH, Department of State Health Services, Infectious Disease Prevention Section, Zoonosis Control Branch, Mail Code 1956, P. O. Box 149347, Austin, Texas 78714-9347, or by email to Tom.Sidwa@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendments are authorized under the Health and Safety Code, Chapter 821, "Euthanasia of Animals," §821.053, which requires the Executive Commissioner of the Health and Human Services Commission to establish the requirements and procedures for administering sodium pentobarbital to euthanize an animal in the custody of an animal shelter; §821.054, which requires the Executive Commissioner of the Health and Human Services Commission to establish standards for a carbon monoxide chamber used to euthanize an animal (other than a dog or cat) in the custody of an animal shelter and the requirements and procedures for administering commercially compressed carbon monoxide to euthanize an animal in the custody of an animal shelter; §4 of SB 360, 83rd Legislature, Regular Session, 2013, which requires the Executive Commissioner to adopt rules necessary to conform to amended Health and Safety Code, §821.052 and §821.054 by December 1, 2013; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The amendments affect Health and Safety Code, Chapters 821 and 1001; and Government Code, Chapters 531 and 2001.

Legend: (Proposed Amendment(s))

Single Underline = Proposed new language

[Bold, Print, and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§169.81. Purpose.

The purpose of this subchapter **[these sections]** is to set minimum standards for allowable methods of euthanasia for an animal(s) in the custody of an animal shelter, in accordance with the Texas Health and Safety Code, Chapter 821.

§169.82. Definitions. **[Definition.]**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Animal shelter--A facility that collects, impounds, or keeps stray, homeless, abandoned, or unwanted animals.

(2) Department--The Department of State Health Services.

[In this chapter, animal shelter, unless the context clearly indicates otherwise, means a facility that collects, impounds, or keeps stray, homeless, abandoned, or unwanted animals.]

§169.83. Animal Identification and Owner Notification.

Prior to euthanasia, each animal should first be scanned for microchip identification and searched for identification tattoos; at a minimum, the abdomen, inner thighs, and inside ear flaps should be searched for tattoos. If identification is located on an animal or the animal is wearing a tag(s), reasonable efforts to locate and notify the animal's owner shall be made and documented prior to euthanasia.

§169.84. Allowable Methods of Euthanasia.

(a) Only sodium pentobarbital **[or commercially compressed carbon monoxide gas]** may be used to euthanize a dog or cat in the custody of an animal shelter.

(b) When sodium pentobarbital is used to euthanize a dog or cat **[an animal]**, the following requirements apply.

[(1) Persons administering sodium pentobarbital must be thoroughly trained in the proper methods and techniques for euthanizing animals. A person has until the 120th day following the date of initial employment to complete this training.]

(1) [(2)] The preferential route [routes] of administration [injections] of sodium pentobarbital is intravenous injection by hypodermic needle. Other routes considered to be acceptable are [, listed in the order of preference, shall be]:

[(A) intravenous injection by hypodermic needle;]

(A) [(B)] intraperitoneal injection by hypodermic needle; or

(B) [(C)] intra-organ, limited to intraosseous, intracardiac, intrahepatic, intrasplenic, and intrarenal, injection by hypodermic needle.

(2) [(3)] Any injection must be administered using a new, undamaged sterilized hypodermic needle of a size suitable for the size and species of the animal.

(3) [(4)] Injection shall be conducted in an area out of public view and out of the view of another animal, except when euthanizing unweaned/nursing animals with their mother; when euthanizing a mother animal with her offspring, the mother animal shall be euthanized first immediately followed by euthanasia of her offspring. Additionally [additionally], the carcass(es) [carcass] of any animal(s) shall be removed from the euthanasia area prior to a live animal(s) entering that area.

(4) [(5)] The area used for injection shall be in a quiet location and have sufficient lighting to allow for visual accuracy during the injection process.

(5) [(6)] A dose of sodium pentobarbital appropriate for the animal's weight shall be administered to that animal through the route most appropriate for that animal.

(6) [(7)] Each animal given sodium pentobarbital by intraperitoneal injection must be given 3 to 4 times the intravenous dose.

(7) [(8)] Each animal given sodium pentobarbital by intraperitoneal injection shall be placed in a quiet, darkened area and, except when euthanizing unweaned/nursing animals with their mother, separated from physical contact with any other animal(s) during the dying process. When euthanizing a mother animal with her offspring, the mother animal shall be euthanized first immediately followed by euthanasia of her offspring.

(8) [(9)] Intra-organ [Intracardiac] injection shall [may] not be used unless the animal is **[heavily sedated,]** unconscious[,] or anesthetized so that the animal is unable to feel pain.

(9) [(10)] The carcass of any animal(s) euthanized by sodium pentobarbital must be stored and disposed of in a manner that minimizes the potential for scavenging by animals or humans.

(c) Any animal other than a dog or cat, including birds and reptiles, in the custody of an animal shelter shall be humanely euthanized only in accordance with the methods, recommendations, and procedures of the American Veterinary Medical Association (AVMA) in the latest edition of the AVMA Guidelines for the Euthanasia of Animals applicable to that species of animal.

(d) [(c)] When commercially compressed carbon monoxide gas is used to euthanize an animal(s), the following requirements apply.

(1) It must be performed in a commercially manufactured carbon monoxide chamber or one designed and constructed, at a minimum, to equal the effectiveness of a commercially manufactured chamber.

(2) The chamber must be located outdoors or in a well-ventilated room.

(3) The chamber must be airtight and equipped with the following:

(A) an exhaust fan for indoor chambers which is capable of evacuating all gas from the chamber prior to the chamber being opened and is connected by a gas-type duct to the outdoors;

(B) a gas flow regulator and flow meter for the canister;

(C) a gas concentration gauge;

(D) an accurate temperature gauge for monitoring the interior of the chamber;

(E) if located indoors, a carbon monoxide monitor on the exterior of the chamber that is connected to an audible alarm system, which will sound in the room containing the chamber;

(F) explosion-proof electrical equipment if equipment is exposed to carbon monoxide;

(G) a view-port with either internal lighting or external lighting sufficient to allow visual surveillance of any animal(s) within the chamber; and

(H) if designed to euthanize more than one animal at a time, independent sections or cages to separate individual animals.

(4) The gas concentration process must achieve at least a 6% carbon monoxide gas concentration not to exceed 10% due to flammability and explosiveness throughout the chamber within 5 minutes after the introduction of carbon monoxide into the chamber is initiated.

(5) The ambient temperature inside the chamber should not exceed 85 degrees Fahrenheit (29.4 degrees Celsius) when it contains a live animal(s). For an outdoor chamber, achievement may be facilitated by use of the chamber during early morning.

(6) All equipment, as specified in paragraph (3)(A) - (H) of this subsection, must be in proper working order and used at all times during the operation of the chamber.

(7) An animal(s) must be left in the chamber with a continuous gas supply for a minimum of 15 minutes **[not be removed from the chamber until at least 5 minutes after cessation of respiratory movement]**.

(8) The chamber must be thoroughly vented prior to removing any carcasses.

(9) The chamber must be thoroughly cleaned after the completion of each cycle. Chamber surfaces must be constructed and maintained so they are impervious to moisture and can be readily sanitized.

[(10) Persons operating the chamber must be thoroughly trained in the proper methods and techniques for euthanizing animals. A person has until the 120th day following the date of initial employment to complete this training.]

(10) [(11)] Operation, maintenance, and safety instructions and guidelines must be displayed prominently in the area containing the chamber.

(11) [(12)] Carbon monoxide shall not be used to euthanize any animal reasonably presumed to be less than 16 weeks of age. Carbon monoxide shall also not be used to euthanize any animal that could be anticipated to have decreased respiratory function, such as the elderly, sick, injured, or pregnant. Such animals may be resistant to the effects of carbon monoxide and the time required to achieve death in these animals may be significantly increased. In animals with decreased respiratory function, carbon monoxide levels rise slowly, making it more likely that these animals will experience elevated levels of stress.

(12) [(13)] Only compatible animals of the same species may be placed in the chamber simultaneously.

(13) [(14)] No live animal(s) may be placed in the chamber with a dead animal(s).

[(d) Any animal other than cats and dogs, including birds and reptiles, in the custody of an animal shelter shall be humanely euthanized only in accordance with the methods, recommendations, and procedures prepared by the American Veterinary Medical Association (AVMA) and set forth in the AVMA *Guidelines on Euthanasia* (June 2007) applicable to each species of animal.]

(e) Prior to using any method of euthanasia, all available measures should be taken to minimize the fear, anxiety, and distress of the animal scheduled for euthanasia.

(f) [(e)] When using any of the allowable methods of euthanasia, each animal must be monitored between the time euthanasia procedures have commenced and the time death occurs, and the animal's body must not be disposed of until death is confirmed by examination of the animal for cessation of vital signs.

(g) As specified under the Texas Health and Safety Code, §821.055, a person (excluding licensed veterinarians) may not euthanize any animal in the custody of an animal shelter unless the person has successfully completed a training course in the proper methods and techniques for euthanizing animals not later than three years before the date the person euthanizes the animal. The training course must be pre-approved by the department. A person has until the 120th day following the date of initial employment to complete this training.